

TITLE 58
PUBLIC LANDS

CHAPTER 13
NAVIGATIONAL ENCROACHMENTS

58-1301. ENCROACHMENT ON NAVIGABLE LAKES -- LEGISLATIVE INTENT. The legislature of the state of Idaho hereby declares that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. No encroachment on, in or above the beds or waters of any navigable lake in the state shall hereafter be made unless approval therefor has been given as provided in this act.

[(58-1301) I.C., sec. 58-142, as added by 1974, ch. 243, sec. 1, p. 1608; 1990, redesignated, ch. 362, sec. 1, p. 980.]

58-1302. ENCROACHMENT ON NAVIGABLE LAKES -- DEFINITIONS. (a) "Navigable lake" means any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes. This definition does not include man-made reservoirs where the jurisdiction thereof is asserted and exclusively assumed by a federal agency.

(b) "Beds of navigable lakes" means the lands lying under or below the "natural or ordinary high water mark" of a navigable lake and, for purposes of this act only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one.

(c) "Natural or ordinary high water mark" means the high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes.

(d) "Artificial high water mark" means the high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line.

(e) "Low water mark" means that line or elevation on the bed of the lake marked or located by the average low water elevations over a period of years and marks the point to which the riparian rights of adjoining landowners extend as a matter of right, in aid of their right to use the waters of the lake for purposes of navigation.

(f) "Riparian or littoral rights" means only the rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake.

(g) "Line of navigability" means a line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question.

(h) "Encroachments in aid of navigation" means and includes docks, piers, floats, pilings, breakwaters, boat ramps, channels or basins, and other such aids to the navigability of the lake, on, in or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments."

(i) "Encroachments not in aid of navigation" means and includes all other encroachments on, in or above the beds or waters of a navigable lake, including landfills or other structures not constructed primarily for use in aid of the navigability of the lake. The term "encroachments not in aid of navigation" may be used interchangeably herein with the term "nonnavigational encroachments."

(j) "Board" means the board of land commissioners of the state of Idaho or its authorized representative.

(k) "Plans" means maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same.

[(58-1302) 58-143, as added by 1974, ch. 243, sec. 2, p. 1608; 1990, redesignated, ch. 362, sec. 2, p. 980; am. 2006, ch. 111, sec. 1, p. 305; am. 2006, ch. 134, sec. 1, p. 389.]

58-1303. ENCROACHMENT ON NAVIGABLE LAKES -- POWERS OF STATE LAND BOARD. The board of land commissioners shall regulate, control and may permit encroachments in aid of navigation or not in aid of navigation on, in or above the beds or waters of navigable lakes as provided herein.

[(58-1303) 1974, ch. 243, sec. 3, p. 1608; 1990, redesignated, ch. 362, sec. 3, p. 981.]

58-1304. ENCROACHMENT ON NAVIGABLE LAKES -- RULES AND REGULATIONS. The board may adopt, revise and rescind such rules and regulations and issue such general orders as may be necessary to effectuate the purposes and policy of this chapter within the limitations and standards set forth in this chapter. Rules, regulations and orders adopted or issued pursuant to this section may include, but are not limited to, minimum standards to govern projects or activities for which a permit or permits have been received under this chapter and regulations governing procedures for processing applications and issuing permits under this chapter. Minimum standards shall not be adopted pursuant to this section until after they have been offered for review and comment to other state agencies having an interest in activities regulated under this chapter. Any standards, rules, regulations and general orders adopted or issued pursuant to this section shall be promulgated in accordance with the provisions of [chapter 52, title 67](#), Idaho Code, to the extent that the provisions of [chapter 52, title 67](#), Idaho Code, are not inconsistent herewith.

[(58-1304) I.C., sec. 58-145, as added by 1974, ch. 243, sec. 4, p. 1608; 1990, redesignated, ch. 362, sec. 4, p. 981.]

58-1305. NONCOMMERCIAL NAVIGATIONAL ENCROACHMENTS -- PROCEDURES -- REPAIRS -- FORMS. (a) Applications for construction or enlargement of navigational encroachments not extending beyond the line of navigability

nor intended primarily for commercial or community use shall be processed by the board with a minimum of procedural requirements and shall not be denied nor appearance required except in the most unusual of circumstances or if the proposed encroachment infringes upon or it appears it may infringe upon the riparian or littoral rights of an adjacent property owner.

(b) If the plans of the proposed encroachment indicate such infringement will or may occur, the board shall require that the applicant secure the consent of such adjacent owner or that he be given notice of the application by personal service or by certified or registered mail, return receipt requested, directed to him at his usual place of address, which, if not otherwise known, shall be the address shown on the records of the county treasurer or assessor, and such adjacent owner shall have ten (10) days from the date of personal service or receipt of certified or registered mail to file objection with the board. The application itself shall be deemed sufficient notice if the adjacent owner is the state of Idaho.

(c) In the event objection to the application is filed by an adjacent owner or if the board deems it advisable because of the existence of unusual circumstances, the board shall fix a time, no later than sixty (60) days from the date of filing application, and a place, for affording the applicant and the adjacent owner filing objection to appear and present evidence in support of or in opposition to the application and within forty-five (45) days thereafter shall render a decision and give notice thereof to the parties concerned who may thereafter resort to appellate procedures prescribed in section [58-1306](#), Idaho Code.

(d) A permit shall not be required for repair of an existing navigational encroachment.

(e) A permit shall not be required for replacement of an existing navigational encroachment if all the following conditions are met:

(1) The existing encroachment is covered by a valid permit in good standing.

(2) The existing encroachment meets the current requirements for new encroachments.

(3) The location and orientation of the replacement do not change from the existing encroachment.

(4) The replacement will be the exact same size or smaller and the same shape as the existing encroachment.

(5) The replacement will not be located closer to adjacent littoral right lines than the existing encroachment.

(f) Applications submitted under this section shall be upon forms to be furnished by the board and shall be accompanied by plans of the proposed navigational encroachment containing information required by section [58-1302](#)(k), Idaho Code, and such other information as the board may by rule require in conformance with the intent and purpose of this chapter.

(g) If notice to an adjacent owner is not required or if the adjacent owner has consented to the proposed encroachment or has failed to file objection to the proposed encroachment within the time allowed following service of notice, the board shall act upon the application as expeditiously as possible but no later than sixty (60) days from receipt of the application and failure to act within such time shall constitute approval of the application.

(h) All permits issued for noncommercial navigational encroachments shall be recorded in the records of the county in which the encroachment is located and shall be a condition of issuance of a permit. Proof of recorda-

tion shall be furnished to the department by the permittee before a permit becomes valid. Such recordation shall be at the expense of the permittee. Recordation of an issued permit serves only to provide constructive notice of the permit to the public and subsequent purchasers and mortgagees, but conveys no other right, title or interest on the permittee other than validation of said permit.

[(58-1305) 58-146, as added by 1974, ch. 243, sec. 5, p. 1608; 1990, am. and redesignated, ch. 362, sec. 5, p. 982; am. 2006, ch. 131, sec. 1, p. 382; am. 2006, ch. 132, sec. 1, p. 385; am. 2010, ch. 124, sec. 1, p. 270.]

58-1306. NONNAVIGATIONAL OR COMMERCIAL NAVIGATIONAL ENCROACHMENTS -- COMMUNITY NAVIGATIONAL ENCROACHMENTS -- NAVIGATIONAL ENCROACHMENTS BEYOND LINE OF NAVIGABILITY -- APPLICATION -- PROCEDURES -- PUBLICATION OF NOTICE -- HEARING -- APPEALS -- RECONSIDERATION -- CRITERIA PRIORITY. (a) Applications for construction, enlargement or replacement of a nonnavigational encroachment, a commercial navigational encroachment, a community navigational encroachment, or for a navigational encroachment extending beyond the line of navigability shall be submitted upon forms to be furnished by the board and accompanied by plans of the proposed encroachment containing information required by section [58-1302\(k\)](#), Idaho Code, and such other information as the board may by rule require in conformance with the intent and purpose of this chapter. Applications for nonnavigational, community navigational, or commercial navigational encroachments must be submitted or approved by the riparian or littoral owner.

(b) Within ten (10) days of receipt of an application submitted under subsection (a) of this section, the board shall cause to be published in a newspaper having general circulation in the county in which the encroachment is proposed, once a week for two (2) consecutive weeks, a notice advising of the application and describing the proposed encroachment and general location thereof. Applications for installation of buried or submerged water intake lines and utility lines shall be exempt from the newspaper publication process. The board may also furnish copies of the application and accompanying plans to other state agencies having an interest in the lake to determine the opinion of such state agencies as to the likely effect of the proposed encroachment upon adjacent property and lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality. Within thirty (30) days following receipt of such copy of the application and plans from the board, such other state agency shall notify the board of its opinion and recommendations, if any, for alternate plans determined by such agency to be economically feasible to accomplish the purpose of the proposed encroachment without adversely affecting unreasonably adjacent property or other lake value factors.

(c) Any resident of the state of Idaho, or a nonresident owner or lessee of real property adjacent to the lake, or any state or federal agency may, within thirty (30) days of the first date of publication, file with the board an objection to the proposed encroachment and a request for a hearing on the application. If a hearing is requested, the same shall be held no later than ninety (90) days from the date of filing the application and notice of such hearing shall be given in the manner prescribed for publishing notice of application. The board may, in its discretion, within ten (10) days of filing the application, order a hearing in the first instance in which case, publication of notice of the application shall be dispensed with. All

such hearings shall be public and held under rules promulgated by the board under the provisions of [chapter 52, title 67](#) of the Idaho Code. The board shall render a decision within thirty (30) days following conclusion of the hearing and a copy of the board's decision shall be mailed to the applicant and to each person or agency appearing at the hearing and giving testimony in support of or in opposition to the proposed encroachment. Any applicant or other aggrieved party so appearing at a hearing shall have the right to have the proceedings and decision of the board reviewed by the district court in the county where the encroachment is proposed by filing notice of appeal within thirty (30) days from the date of the board's decision. If the decision of the board be approval of a permit, the party or parties appealing shall file a bond on such appeal in an amount to be fixed by the court but not less than five hundred dollars (\$500) insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney's fees, incurred on the appeal in the event the district court sustains the action of the board.

(d) In the event no objection to the proposed encroachment is filed with the board and no hearing is requested or ordered by the board, based upon its investigation and considering the economics of navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property and lake value factors, the board shall prepare and forward to the applicant by certified mail its decision and the applicant, if dissatisfied therewith, shall have twenty (20) days from the date of mailing of such decision to notify the board if he requests a reconsideration thereof and if such request is made, the board shall set a time and place for reconsideration, not to exceed thirty (30) days from receipt of such request, at which time and place the applicant may appear in person or by authorized representative. If aggrieved by the board's decision following reconsideration, the applicant may appeal to the district court in the same manner as that provided for following a hearing.

(e) In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, the board shall consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for a nonnavigational encroachment, a commercial navigational encroachment, or a community navigational encroachment not extending below the natural or ordinary high water mark. If no objections have been filed to the application and no hearing has been requested or ordered by the board, or, if upon reconsideration of a decision disallowing a permit, or following a hearing, the board determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, it shall grant the permit. As a condition of the permit, the board may require a lease or easement for use of any part of the state owned bed of the lake.

(f) All permits issued for nonnavigational encroachments, commercial navigational encroachments, and community navigational encroachments shall be recorded in the records of the county in which the encroachment is located and shall be a condition of issuance of a permit. Proof of recordation shall be furnished to the department by the permittee before a permit becomes valid. Such recordation shall be at the expense of the permittee. Recordation of an issued permit serves only to provide constructive notice of the permit to the public and subsequent purchasers and mortgagees, but conveys

no other right, title or interest on the permittee other than validation of said permit.

(g) A permit shall not be required for repair of an existing nonnavigational encroachment, commercial navigational encroachment, or community navigational encroachment.

[(58-1306) 58-147, as added by 1974, ch. 243, sec. 6, p. 1608; 1990, am. and redesignated, ch. 362, sec. 6, p. 983; am. 2006, ch. 131, sec. 2, p. 383; am. 2006, ch. 132, sec. 2, p. 386.]

58-1307. FEES FOR SPECIFIED PERMITS -- COSTS OF PUBLICATION. Application for a permit for any noncommercial navigational encroachment shall be accompanied by a nonrefundable fee of up to five hundred dollars (\$500). Application for a permit for any noncommercial nonnavigational encroachment for bank stabilization and erosion control or for fisheries and wildlife habitat improvements shall be accompanied by a nonrefundable fee of up to one thousand dollars (\$1,000). Application for a permit for any other nonnavigational or commercial navigational encroachment or navigational encroachment which extends beyond the line of navigability shall be accompanied by a nonrefundable base fee, not to exceed three thousand five hundred dollars (\$3,500). Provided however, the board shall charge applicants for permits for commercial navigational encroachments the actual costs of processing the application in the event the actual costs exceed three thousand five hundred dollars (\$3,500). In addition, the board shall charge the applicant with costs of publishing notice of the application which shall be refunded if such notice is not published. Any person or agency requesting a hearing upon the application shall deposit and pay to the board an amount sufficient to cover the cost of publishing notice of hearing.

[(58-1307) 58-148, added 1974, ch. 243, sec. 7, p. 1608; 1990, am. and redesign., ch. 362, sec. 7, p. 985; am. 1992, ch. 225, sec. 1, p. 675; am. 2006, ch. 133, sec. 1, p. 388; am. 2010, ch. 155, sec. 1, p. 330.]

58-1308. PENALTY FOR VIOLATION -- INJUNCTIVE RELIEF. (1) Any person who violates any of the provisions of this chapter or any valid and authorized regulation, rule, permit or order of the board, or, where notified by personal service or certified mail of such violation and thereafter fails to cease and desist therein or obey an order of the board within the time provided in such notification or within thirty (30) days of service of such notice if not otherwise provided, shall be subject to a civil penalty of not less than one hundred fifty dollars (\$150) nor more than two thousand five hundred dollars (\$2,500). Such civil penalty may be assessed by the board in conjunction with any other administrative action; provided, that no civil penalty shall be assessed unless the person was given notice and opportunity for a hearing pursuant to the administrative procedure act as set forth in [chapter 52, title 67](#), Idaho Code. The board shall have authority and it shall be its duty to seek injunctive relief from the appropriate district court to restrain any person from encroaching on, in or above the beds or waters of a navigable lake until approval therefor has been obtained as provided in this chapter.

(2) In addition to the civil penalty set forth in subsection (1) of this section, any person who violates any of the provisions of this chapter or any valid and authorized regulation, rule, permit or order of the board, and the violation causes harm to water quality, fisheries, or other public trust

values, shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per violation or one thousand dollars (\$1,000) for each day of a continuing violation, whichever is greater. The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. Parties to an administrative enforcement action may agree to a civil penalty as provided in this subsection.

(3) In addition to such civil penalties, any person who has been determined to have violated the provisions of this chapter or any valid and authorized regulation, rule, permit or order of the board, shall be liable for any expense incurred by the state in enforcing the chapter, or in enforcing or terminating any nuisance, source of environmental degradation, cause of sickness or health hazard.

(4) No action taken pursuant to the provisions of this chapter or of any other environmental protection law shall relieve any person from any civil action and damages that may exist for injury or damage resulting from any violation of this chapter or any valid and authorized regulation, rule, permit or order of the board.

[(58-1308) 58-149, as added by 1974, ch. 243, sec. 8, p. 1608; am. and redesign. 1990, ch. 362, sec. 8, p. 985; am. 2008, ch. 334, sec. 1, p. 919.]

58-1309. RESTORATION -- MITIGATION OF DAMAGES. Any person legally found to be wrongfully encroaching on, in or above the beds or waters of a navigable lake shall, in lieu of or in addition to penalties provided herein, be directed by the court to restore the lake to as near its condition immediately prior to the unauthorized encroachment as possible or to effect such other measures as recommended by the board and ordered by the court toward mitigation of any damage caused by or resulting from such unlawful encroachment.

[(58-1309) I.C., sec. 58-150, as added by 1974, ch. 243, sec. 9, p. 1608; 1990, redesignated, ch. 362, sec. 9, p. 985.]

58-1310. EXISTING RIGHTS UNAFFECTED. This act shall not operate or be so construed as to impair, diminish, control or divest any existing or vested water rights acquired under the laws of the state of Idaho or the United States, nor to interfere with the diversion of water from lakes under existing or vested water rights or water right permits for irrigation, domestic, commercial or other uses as recognized and provided for by Idaho water laws nor shall permit be required from a water user or his agent to clean, maintain or repair any existing diversion structure or works provided the board is notified of the work proposed to be done and the work is done as nearly as possible in a manner conforming to rules and regulations of the board for work done under permit nor shall this act be construed to impair existing encroachments in aid of navigation or any right heretofore granted an applicant by the director of the Idaho department of water resources or the director of the department of lands, nor shall this act be construed to impair existing nonnavigational encroachments not extending beyond the natural or ordinary high water mark if they have been in existence at least five (5) years prior to the effective date of this act nor any other existing nonnavigational encroachment unless action to abate the same by legal proceedings be instituted by the board within three (3) years of the effective

date of this act. If abatement proceedings be instituted by the board, the court shall hear such evidence as would be pertinent upon an original application and shall consider also the length of time the encroachment has existed and its general acceptance.

[(58-1310) I.C., sec. 58-151, as added by 1974, ch. 243, sec. 10, p. 1608; 1990, redesignated, ch. 362, sec. 10, p. 986.]

58-1311. DISCLAIMER OF STATE PROPERTY RIGHTS IN PRIVATE LANDS. While the state asserts the right to regulate and control all encroachments, navigational or nonnavigational, upon, in or above the beds or waters of navigable lakes as provided for in this act, nothing contained in this act shall be construed to vest in the state of Idaho any property right or claim of such right to any private lands lying above the natural or ordinary high water mark of any navigable lake.

[(58-1311) I.C., sec. 58-152, as added by 1974, ch. 243, sec. 11, p. 1608; 1990, redesignated, ch. 362, sec. 11, p. 986.]

58-1312. PERMITTING OF EXISTING ENCROACHMENTS. (1) Unless otherwise prohibited, every person seeking a permit for a navigational or nonnavigational encroachment constructed prior to January 1, 1975, shall provide the board with substantive documentation of the age of the encroachment and documentation that the encroachment has not been modified since 1974. Persons providing such documentation shall receive an encroachment permit and shall not be required to pay the application and publication fees established in this chapter. Such substantive documentation shall include dated aerial photographs, tax records, or other historical information deemed reliable by the board.

(2) Every person seeking a permit for a navigational or nonnavigational encroachment constructed, replaced or modified on or after January 1, 1975, shall submit a permit application and enter the same permitting process as required for new encroachments.

[(58-1312) 58-153, added 1974, ch. 243, sec. 12, p. 1608; 1990, am. & redesignig., ch. 362, sec. 12, p. 986; am. 2006, ch. 135, sec. 1, p. 390.]